IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4832 OF 2006

Smt.Tulsibai Shankar Vaijal & Ors .. Petitioners.
Vs.
Santacruz Ratnakar Co-operative
Housing Societies Ltd. .. Respondents.

Mr.Abhay L.Patki for the petitioners.
Mr.N.V.Walawalkar with Mr.T.A.Purohit for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 29TH AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioners and the respondents.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Walawalkar, learned counsel waives service for the respondents.

3. By this writ petition under Article 227 of the Constitution of India the petitioners have impugned the order dated 8th June, 2006 by which the application dated 11.7.2005 filed by the petitioners-defendants for setting aside "No W.S." order dated 22.3.2005 has been rejected. It is true that there was delay of about 9 months in filing the written statement. In the application dated 11.7.2005 it had been specifically stated that the papers were entrusted to the advocate for filing written statement

within time, however, due to some personal difficulties he could not file it on time. I am informed that the advocate has filed an affidavit taking blame on himself for not filing written statement within time. The observations made in paragraph 7 of the impugned order that the application was affirmed do not appear to be correct. Though the application itself was not affirmed, the affidavit in support thereof was filed by the petitioners and this fact has not been disputed by the respondents-plaintiffs. The learned Judge while rejecting the application in paragraph 7 has further observed that it is difficult to accept that the defendants would totally rely on their advocate and keep quiet. I fail to understand as to in what way, after having entrusted the papers to the lawyer, the client can pursue the matter further except relying upon their advocate. The obligation of the litigant is to select his advocate, brief/instruct him, pay the fees demanded by him and then to trust the learned advocate to do the rest of the things. In the present petition it is not the case of the respondent that the petitioner did not instruct or brief his advocate or handed over all the papers. After having done everything in his power, it was responsibility of the advocate. The petitioner cannot be held to be grossly negligent. Mr.Walawalkar, learned senior counsel for the respondents invited my attention to paragraph 4 of

the impugned order which shows that the matter was adjourned from time to time for enabling the defendants to file written statement and despite such opportunities W.S. was not filed and in view thereof, according to Mr.Walawalkar, the court below was forced to pass "No W.S." order on 22.3.2005. My attention was also drawn to the statements made in the affidavit in reply and in particular paragraph 6 thereof. After having considered the submissions of learned counsel for the parties, perused the impugned order and reply affidavit it is clear that the advocate for the petitioners had failed to file written statement within time. Keeping that in view and in the interest of justice I am inclined to allow this petition. It may be noticed that the defendants have already filed written statement on 17.6.2005 on record. In the circumstances the impugned order dated 22.3.2005 is quashed and set aside. The petitioners are directed to pay cost of Rs.1,000/- to the respondents-plaintiffs within four weeks from today as a condition precedent for taking his written statement on file. The written statement placed on record on 17.6.2005 be taken to file. The trial Court shall proceed with the suit and dispose of the same expeditiously.

. Rule is, accordingly, made absolute.

(D.B.Bhosale, J.)